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No. 83-1073

In the Supreme Court of the United States

OCTOBER TERM, 1983

MAIDSVILLE COAL COMPANY, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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QUESTION PRESENTED

Whether the National Labor Relations Board reasonably concluded that petitioner's violations of the National Labor Relations Act — which included discriminatory discharges, threats of job loss, a threat of physical harm and numerous other unfair labor practices — precluded the holding of a fair election and therefore warranted the issuance of a bargaining order based on authorization cards.

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Section 8(a)(3), 29 U.S.C. 158(a)(3) 6

Section 8(a)(5), 29 U.S.C. 158(a)(5) 6

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OPINIONS BELOW

The opinion of the en banc court of appeals (Pet. App. A1-A5) is reported at 718 F.2d 658. The opinion of the panel of the court of appeals that decided this case initially (Pet. App. A6-A26) is reported at 693 F.2d 1119. The decision and order of the National Labor Relations Board (Pet. App. A29-A136) are reported at 257 N.L.R.B. 1106.

JURISDICTION

The judgment of the en banc court of appeals was entered on October 5, 1983. The petition for a writ of certiorari was filed on December 30, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

Relevant provisions of the National Labor Relations Act, 29 U.S.C. (& Supp. V) 151 *et seq.*, are set forth at Pet. 2-4.

STATEMENT

Upon finding that petitioner had committed repeated unfair labor practices "of such a pervasive and extensive nature that [the Board's] ordinary and usual remedies would not erase them sufficiently so as reasonably to insure the future holding of a fair election" (Pet. App. A30 n. 1), the Board issued a bargaining order on the basis of authorization cards signed by a majority of bargaining unit employees. Petitioner does not dispute the Board's unfair labor practice findings, but contends only that the Board failed to offer an adequate explanation for its choice of remedies (Pet. 7-13).

1. Petitioner is engaged in the preparation and sale of specialized coal to industrial users at its facility in Maidsville, West Virginia (Pet. App. A36). In March 1979,[1] the United Mine Workers of America, District 31 (the Union) began an organizing campaign among production and maintenance employees at the Maidsville plant. Union organizers contacted individual employees, and, by April 10, the Union had obtained authorization cards signed by five of the nine unit employees (*id.* at A69-A72).[2] On April 19, the Union formally requested petitioner to recognize and bargain with the Union, but petitioner refused (*id.* at A92-A93). On April 20, the Union filed a petition for an election with the Board (*id.* at A109 n.48).

Meanwhile, shortly after the Union began its organizing activities, petitioner, through both its supervisors and

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[1]All dates are in 1979, unless otherwise noted.

[2]Before the Board, the parties contested the unit status of several employees, including a sixth employee who signed a union authorization card on April 11. The Board ultimately determined that a majority of the employees appropriately within the unit had signed cards as of April 10 (Pet. App. A37-A69). Petitioner does not contest that finding in this Court.

senior officials, embarked on a campaign of threats, promises, wage increases, coercive interrogations, and discharges in an effort to dissuade union supporters from selecting the Union as their bargaining representative. In late March, supervisor James Freeman, who had earlier learned of the Union's campaign through conversations with an organizer, asked employee Charles Trippitt whether he had signed a union card.[3] When Trippitt replied that he had not, Freeman told Trippitt that "there would be no union; that he might as well forget it; and that the Petittes [president and vice-president of petitioner] * * * would put their hardhats on and run the place themselves" (Pet. App. A74). Sometime in early April, Freeman told plant superintendent Charles Guseman of the organizing efforts (*id.* at A75).

On April 4, Guseman granted hourly wage increases to employees Kenneth Roberson and Howard Tennant (Pet. App. A72). On April 9 and 10, employees Earl Bowman, Trippitt, Roberson, Richard Heller, and Willard Eddy signed union authorization cards (*id.* at A71). On April 10 and 11, petitioner's president, John Petitte, informed employees Bowman, Trippitt, and Eddy that they were being granted hourly wage increases effective April 18 (*id.* at A72-A73). Petitte promised Eddy that if things went well he would receive another raise in six to eight months (*id.* at A73). Other employees also were granted raises effective April 18 (*id.* at A72). Finally, on the evening of April 10, Freeman again told employees Trippitt and Bowman that they should forget about the Union and that the Petittes would run the operation themselves rather than deal with the Union (*id.* at A74-A75).

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[3]Although Freeman was not formally designated as a supervisor, the Board found that he was in effect a supervisor within the meaning of the Act by virtue of his job functions (Pet. App. A55 & n.15). The Union was unaware of Freeman's status at the outset of its organizing campaign (*id.* at A69-A70).

On April 12, President Petitte asked Bowman whether a union organizer had been to his house and what Bowman had told him. Petitte promised Bowman another raise during the summer, and also told him that Petitte could not afford a union and that he would lay off the employees and run the plant himself if the Union was voted in. Petitte told Bowman to keep his father away from the company because he believed that the union mine where Bowman's father worked was the source of petitioner's union problem. Pet. App. A81-A83.

On the afternoon of April 12, petitioner decided to terminate Bowman, Trippitt, Eddy, and Heller in order to forestall unionization. These employees were notified of their discharges on April 13, 14, and 15. Pet. App. A89-A92.

In response to the Union's bargaining demand of April 19, President Petitte contacted his lawyer, who advised him to reinstate the four discharged employees. Petitioner offered reinstatement to all four, but continued to offer additional raises and benefits, to interrogate employees about the union campaign, and to threaten retaliation if the Union won. On April 20, foreman James Casino asked Heller what he knew about the union campaign. Later that day, Petitte drove to Heller's house and, while offering reinstatement with raises to Heller and Eddy, threatened to lay them off if the Union was voted in. Pet. App. A93-A100. On the other hand, Petitte solicited grievances and proposals from the employees, offered to develop a pension plan, and said he would grant a pay increase, vacation pay, and paid holidays as soon as the Union was voted out. He asked Heller to act as spokesman for the employees. *Id.* at 96-100. Petitte returned to Heller's house the following day to report on his progress in developing the pension plan and to schedule a meeting for April 23 to discuss the proposals (*id.* at A100-A102). Finally, on April 23, Freeman offered reinstatement

to Bowman, told him to forget about the Union, and said that additional raises would be forthcoming (*id.* at A94-A95).

On the afternoon of April 23, petitioner held a meeting with all employees and explained that, because the Union had filed a representation election petition with the Board, petitioner could not negotiate with or make promises to the employees (Pet. App. A108-A109). However, at a later meeting of employees at which supervisor Freeman was present,[4] Freeman solicited a unanimous vote in favor of proposals that the employees wanted to make to the company and then stated that if the Union were voted out the proposals would be effective immediately (*id.* at A110). Over the objections of employees Heller, Eddy, Bowman, and Trippitt (*id.* at A111), Freeman stated that "if it took all day long they were going to * * * vote the Union out" (*id.* at A110). With those four employees abstaining, five employees—including one who had earlier expressed interest in the Union but had just received a $1.50 per hour wage increase, and employee Roberson, who had earlier signed a union card—voted against the Union (*id.* at A71-A72, A110-A111). At Freeman's urging, the vote was recorded by a notary public in petitioner's employ, and the document was given to President Petitte (*id.* at A112). The four recalled employees then were given checks to cover backpay (*ibid.*).

Subsequently, Petitte embarked on a vigorous campaign of interrogations and threats of job loss directed at employee Heller. On April 24 and 25, on May 2, and on almost every day thereafter for several weeks, Petitte approached Heller with questions about employee sentiment toward the Union and threats of layoffs if the Union were voted in. The

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[4]Management officials excused themselves from the employees' meeting, but because Freeman was not formally designated as a supervisor he was permitted to stay (Pet. App. A110).

questioning upset Heller to the point that he became ill on the job and was advised by his doctor to take some time off. Pet. App. A112-A121.

On May 17, a man who was about six feet tall and weighed 250 pounds, with "great big arms and neck" (Pet. App. A122), approached Heller at work after talking with President Petitte. He pointed his finger at Heller, backed him into a corner, and asked " '[w]hat's this I hear about a labor problem down here?' " (*ibid.*). Continuing to shake his finger in Heller's face, the man then said, " 'I'm going to tell you something, I don't want to hear no more about a labor problem down here. The Petittes don't want a union down here, so I better not hear no more about it' " (*ibid.*). On May 21, Heller quit his employment with petitioner because " 'it's just too much pressure, I can't take it anymore' " (Pet. App. A124).

2. The Board, adopting the findings and conclusions of the administrative law judge, found that petitioner violated Section 8(a)(5) and (1) of the Act, 29 U.S.C. 158(a)(5) and (1), by refusing to bargain with the Union on and after April 19. The Board further found that petitioner violated Section 8(a)(3) and (1) of the Act, 29 U.S.C. 158(a)(3) and (1), by discharging employees Bowman, Eddy, Heller, and Trippitt on April 12, and by constructively discharging employee Heller on May 21, because of their union activity. The Board found that petitioner violated Section 8(a)(1) of the Act, 29 U.S.C. 158(a)(1), by interrogating employees about their union activities and the activities of their coworkers; by granting wage increases in order to dissuade employees from supporting the Union; by promising further raises and other benefits; by threatening employees with layoffs, discharge, cessation or reduction of operations, and nonrecall because of union activities; and by threatening an employee with physical harm if he continued to engage in union activities. Pet. App. A29-A30 & n.1, A130-A131.

Finding that "a fair election has been precluded by [petitioner's] unfair labor practices," the Board ordered petitioner to recognize and bargain with the Union on the basis of the authorization cards signed by a majority of the unit employees.[5] In explaining the basis for its conclusion that a bargaining order was the appropriate remedy, the Board stated (Pet. App. A30 n.1):

> [W]e note that the Employer engaged in repeated violations of Sec. 8(a)(1) and (3) of the Act and that these violations were of such a pervasive and extensive nature that our ordinary and usual remedies would not erase them sufficiently so as reasonably to insure the future holding of a fair election. In particular, the evidence establishes that, at the outset of its employees' union organizational activities, the Employer commenced a campaign designed to undermine and erode the Union's majority support among its employees by discharging four identified union supporters on the sole basis of these employees' union sentiments. At the same time, the Employer violated the Act by interrogating employees concerning their union activities and sentiments; by granting wage increases; by making various promises of improved working conditions and benefits in order to dissuade employees from supporting the Union; and by threatening employees with discharge, layoff, and other reprisals, including the cessation or reduction of operations, if they continued to engage in activities on behalf of the Union. Thereafter, the Employer enlisted the aid of a third party to threaten an employee with physical harm if he continued to support the Union.

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[5] In addition, the Board ordered petitioner to offer reinstatement with full backpay to employee Heller and full backpay to the other employees who had previously been discharged and reinstated, and to cease and desist from the unfair labor practices found and from any like or related conduct (Pet. App. A33, A132-A134).

> Under these circumstances, including the small size of the employee complement in question and the substantial percentage of the work force subjected to the Employer's unlawful terminations and other unfair labor practices, we find that a bargaining order is necessary and appropriate in order to protect the majority sentiment expressed through the authorization cards and to otherwise remedy the violations committed.

3. A divided panel of the court of appeals upheld the Board's unfair labor practice findings but declined to enforce the Board's order and remanded the case on the ground that the Board had failed to advance reasons sufficient to justify its choice of a bargaining order over a traditional cease-and-desist remedy (Pet. App. A10 & n.3, A11-A12). The Board then petitioned for rehearing en banc, the petition was granted, and the panel's decision was vacated. On rehearing, the en banc court enforced the Board's bargaining order (*id.* at A1-A5). The court stated that the principal purpose of "requiring specificity in the Board's findings and reasoning" when it issues bargaining orders "is to facilitate an informed review" (*id.* at A4). " 'To facilitate review under [the *Gissel* [6]] standards, the Board must support a *Gissel* order by a statement of reasons stating what unfair labor practices the order is intended to redress and indicating in general why traditional remedies are inadequate in the circumstances' " (*id.* at A5 (quoting *Standard-Coosa-Thatcher Carpet Yarn Division, Inc.* v. *NLRB*, 691 F.2d 1133, 1144 (4th Cir. 1982), cert. denied, No. 82-1261 (Apr. 18, 1983)). Employing that standard, the en banc court found that the Board's order in this case

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[6]See *NLRB* v. *Gissel Packing Co.*, 395 U.S. 575 (1969), discussed at pages 9-12, *infra*.

sufficiently articulated its findings and reasons in support of a bargaining order (Pet. App. A5).[7]

ARGUMENT

In *NLRB* v. *Gissel Packing Co.*, 395 U.S. 575, 594 (1969), this Court sustained the Board's authority to issue bargaining orders in cases in which "serious unfair labor practices" have been committed "that interfere with the election processes and tend to preclude the holding of a fair election." The Court approved the Board's issuance of bargaining orders not only in " 'exceptional' " cases marked by " 'outrageous' " unfair labor practices (Category I cases) (395 U.S. at 613-614), but also in cases in which the unfair labor practices are "less pervasive," but the Board nevertheless finds "that the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through [authorization] cards would, on balance, be better protected by a bargaining order" (Category II cases) (*id.* at 614-615). The Court also emphasized that (*id.* at 612 n.32):

> It is for the Board and not the courts * * * to make that determination, based on its expert estimate as to the effects on the election process of unfair labor practices of varying intensity. In fashioning its remedies under the broad provisions of § 10(c) of the Act * * *, the Board draws on a fund of knowledge and expertise all its own, and its choice of remedy must therefore be given special respect by reviewing courts.

Petitioner no longer disputes the Board's unfair labor practice findings. Nor does it appear to challenge the conclusion that its unfair labor practices—which included

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[7]Four judges dissented from the en banc decision of the court of appeals for the reasons expressed by the original panel majority (Pet. App. A5).

repeated threats of job loss, interrogations by supervisors and the company president, the discharge of nearly half the bargaining unit employees for engaging in union activities, and a subsequent threat of physical harm to one of the union adherents — were the kind of serious violations that may warrant a bargaining order. Rather, petitioner contends (Pet. 7-13) that the Board's explication of the need for a bargaining order in this case does not meet the requirements of *Gissel* for the issuance of a Category II bargaining order and that the court of appeals' enforcement of the Board's order conflicts with decisions of other circuits.[8] This Court recently rejected an identical challenge to a bargaining order when it denied the petition for a writ of certiorari to review *Standard-Coosa-Thatcher Carpet Yarn Division, Inc.* v. *NLRB*, 691 F.2d 1133 (4th Cir. 1982), cert. denied, No. 82-1261 (Apr. 18, 1983), the decision that the en banc court of appeals followed here (see pages 8-9, *supra*). As in that case, there is no merit to petitioner's contentions here, and there is likewise no need for this Court's review.

1. In concluding that "a fair election has been precluded by [petitioner's] unfair labor practices" (Pet. App. A29-A30 n.1, A127), the Board carefully considered not only the extent of the unfair labor practices and their past effect on the election process, but also their continuing effect. The Board found that the Union represented a majority of

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[8]Petitioner does not contend that there is any conflict among the circuits over the proposition that unfair labor practices of the scope and nature involved here represent the kind of violations that constitute a *Gissel* Category II case. Indeed, the courts of appeals have consistently held that unlawful discharges and threats of job loss are sufficient to justify a Category II bargaining order. See, *e.g.*, *Justak Bros.* v. *NLRB*, 664 F.2d 1074, 1081-1082 (7th Cir. 1981); *NLRB* v. *Wilhow Corp.*, 666 F.2d 1294, 1305 (10th Cir. 1981); *NLRB* v. *Jamaica Towing, Inc.*, 632 F.2d 208, 212-213 (2d Cir. 1980); *NLRB* v. *Pacific Southwest Airlines*, 550 F.2d 1148, 1150-1151 (9th Cir. 1977); *NLRB* v. *Lou De Young's Market Basket, Inc.*, 430 F.2d 912, 915 (6th Cir. 1970).

petitioner's employees when it requested and was refused recognition by petitioner, and that petitioner committed "pervasive and extensive" violations of the Act in an antiunion campaign that began "at the outset of its employees' union organizational activities" and continued after the Union had filed a petition for a representation election (*id.* at A29-A30 n.1, A109). The effect of this campaign was to cause an actual dissipation of the previously expressed union majority (*id.* at A110). The Board relied on the unlawful discharges of nearly half the unit employees, the threat of physical harm directed at employee Heller, the numerous threats of job loss and reprisals, and the coercive interrogations, all of which were set forth in detail in the ALJ's 100-page decision (*id.* at A34-A136). As this Court and the courts of appeals have observed, unfair labor practices such as those committed by petitioner "are more effective to destroy election conditions for a longer period of time than others." *Gissel*, 395 U.S. at 611 n.31; *Standard-Coosa-Thatcher*, 691 F.2d at 1145.[9] Moreover, as the Board found, such unfair labor practices are more likely to have a lasting inhibitive effect where, as here, the bargaining unit affected is small and a substantial percentage of the unit employees have been subjected to the employer's coercive practices (Pet. App. A29-A30 n.1).[10]

These findings plainly are sufficient to meet the requirement of *Gissel* that, in a Category II situation, the Board must determine that "the possibility of erasing the effects of past practices and of ensuring a fair election * * * by the use of traditional remedies * * * is slight and that employee sentiment once expressed through cards would, on balance,

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[9]See also cases cited at page 10 note 8, *supra*.

[10]See, *e.g.*, *Justak Bros.* v. *NLRB*, 664 F.2d at 1082; *NLRB* v. *Wilhow Corp.*, 666 F.2d at 1305; *NLRB* v. *Jamaica Towing, Inc.*, 632 F.2d at 216.

be better protected by a bargaining order" than an election (395 U.S. at 614-615). Contrary to petitioner's apparent contention (Pet. 7-9), the Court in *Gissel* did not impose any rigid analytic framework on the Board or require the Board to recite its findings in any particular verbal formulation. Indeed, the Court in *Gissel* noted that the requisite findings were probably implicit in the Board's decisions to issue bargaining orders (395 U.S. at 613). The Court remanded three of the four cases under review for additional findings only because both the Board and the Court discarded the Board's prior practice of requiring the Board "to phrase its findings in terms of an employer's good or bad faith doubts [concerning the union's majority status]" (395 U.S. at 616). No such extraneous findings infected the Board's decision in the instant case, and it is thus fully consistent with *Gissel*.[11]

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[11]There is no merit in petitioner's contention (Pet. 8) that the Board erred by refusing to consider employee turnover in evaluating the lasting effects of the unfair labor practices involved here. The turnover that had occurred by the time of the hearing before the administrative law judge was insignificant; six of the original union supporters — the five who had signed cards and employee Fain — were still employed by petitioner at that time (GC Exh. 2). Moreover, the affidavit presented by petitioner to the original panel of the court of appeals (Pet. App. A27-A28) indicates that a number of employees were added to the work force after issuance of the Board's bargaining order. It is settled that changes in the work force occurring after issuance of the order are not material; were the rule otherwise, the process of securing court enforcement of a bargaining order would be the very means of its nullification and would encourage continuing litigation by a wrongdoing employer. See *Automated Business Systems* v. *NLRB*, 497 F.2d 262, 275 n.12 (6th Cir. 1974); accord, *Hedstrom Co.* v. *NLRB*, 629 F.2d 305, 312 (3d Cir. 1980) (en banc), cert. denied, 450 U.S. 996 (1981); *Chromalloy Mining & Minerals* v. *NLRB*, 620 F.2d 1120, 1131-1133 (5th Cir. 1980); *NLRB* v. *Pacific Southwest Airlines*, 550 F.2d 1148, 1152-1153 & n.5 (9th Cir. 1977); *NLRB* v. *L.B. Foster Co.*, 418 F.2d 1, 4 (9th Cir. 1969), cert. denied, 397 U.S. 990 (1970).

Petitioner also contends (Pet. 8) that the Board erred by failing expressly to consider the likelihood of future unfair labor practices in

2. Petitioner contends (Pet. 9-12) that the decision below conflicts with decisions in the First, Second, Sixth, Seventh, Ninth, and Tenth Circuits.[12] But the asserted conflict among the circuits has nothing to do with the circumstances in which it is appropriate for the Board to issue bargaining orders; the governing principles were established in *Gissel*, and the courts of appeals have generally followed them. Instead, petitioner contends that the courts of appeals are in conflict over the degree of factual analysis by the Board that is required for meaningful judicial review. Upon examination, it is apparent that petitioner's assertion of a conflict reflects nothing more than the fact that in some cases the courts have criticized the Board's explanation of its decision to issue a bargaining order as being too sketchy to permit meaningful judicial review,[13] while in other cases the courts

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light of petitioner's decision to seek legal counsel during the middle of the campaign. However, as the Court held in *Gissel*, 395 U.S. at 612 (footnote omitted), "a bargaining order is designed as much to remedy past election damage as it is to deter future misconduct." The rationale is simple (*ibid.*): "If an employer has succeeded in undermining a union's strength and destroying the laboratory conditions necessary for a fair election, he may see no need to violate a cease-and-desist order by further unlawful activity." In any event, the record shows that petitioner continued to commit serious unfair labor practices even after seeking counsel by, inter alia, promising to grant benefits if the Union were voted out and engaging in repeated unlawful interrogation and harassment of a primary union adherent—Heller—causing his constructive discharge.

[12]Petitioner concedes (Pet. 12) that the court of appeals' opinion is consistent with decisions in the Third, Fifth, and Eighth Circuits.

[13]See, *e.g.*, *NLRB* v. *Marion Rohr Corp.*, 714 F.2d 228, 230-231 (2d Cir. 1983); *NLRB* v. *Century Moving & Storage, Inc.*, 683 F.2d 1087, 1093 (7th Cir. 1982); *NLRB* v. *Pace Oldsmobile, Inc.*, 681 F.2d 99, 101-102 (2d Cir. 1982); *NLRB* v. *American Spring Bed Mfg. Co.*, 670 F.2d 1236, 1247-1248 (1st Cir. 1982); *NLRB* v. *Rexair, Inc.*, 646 F.2d 249, 251 (6th Cir. 1981); *Red Oaks Nursing Home, Inc.* v. *NLRB*, 633 F.2d 503, 508-511 (7th Cir. 1980); *NLRB* v. *Pilgrim Foods, Inc.*, 591 F.2d 110, 119 (1st Cir. 1978); *Peerless of America, Inc.* v. *NLRB*, 484 F.2d 1108, 1118-1119 (7th Cir. 1973); *NLRB* v. *Miller Trucking*

have found the Board's explanation sufficient (see Pet. 12-13 and page 10 note 8, *supra*). Significantly, all of the circuits that petitioner asserts are in conflict with the Fourth Circuit have enforced Board bargaining orders supported by findings similar to the Board's findings in this case.[14] It is thus apparent that no significant legal conflict exists; instead, the cases cited by petitioner demonstrate only that different factual circumstances will produce different results. Such an unremarkable phenomenon does not warrant this Court's review.

Service, Inc., 445 F.2d 927, 931-932 (10th Cir. 1971). Significantly, in many of these cases the courts refused to enforce Board bargaining orders not only because of a perceived insufficiency in the Board's stated rationale, but because the Board's unfair labor practice findings were either set aside or found not to be of sufficient magnitude to warrant bargaining orders. See, *e.g.*, *Marion Rohr Corp.*, 714 F.2d at 230-231; *Century Moving & Storage, Inc.*, 683 F.2d at 1094; *American Spring Bed Mfg. Co.*, 670 F.2d at 1248; *Red Oaks Nursing Home, Inc.*, 633 F.2d at 510-511; *Donn Products, Inc.* v. *NLRB*, 613 F.2d 162, 166-167 (6th Cir. 1980); *Pilgrim Foods, Inc.*, 591 F.2d at 120; *First Lakewood Associates* v. *NLRB*, 582 F.2d 416, 423-424 (7th Cir. 1978); *Peerless of America, Inc.*, 484 F.2d at 1120-1122.

[14]See, *e.g.*, *United Services for the Handicapped* v. *NLRB*, 678 F.2d 661, 664-665 (6th Cir. 1982); *NRLB* v. *Berger Transfer & Storage Co.*, 678 F.2d 679, 693-694 (7th Cir. 1982), enforcing 253 N.L.R.B. 5, 14 (1980); *NLRB* v. *Hasbro Industries, Inc.*, 672 F.2d 978, 989-990 (1st Cir. 1982), enforcing 254 N.L.R.B. 587, 594-595 (1981); *NLRB* v. *Wilhow Corp.*, 666 F.2d 1294, 1305 (10th Cir. 1981), enforcing 244 N.L.R.B. 303, 315 (1979); *Justak Bros.* v. *NLRB*, 664 F.2d 1074, 1081-1082 (7th Cir.), enforcing 253 N.L.R.B. 1054, 1084-1085 (1981); *Coating Products, Inc.* v. *NLRB*, 648 F.2d 108, 109 (2d Cir. 1981); *NLRB* v. *Davis*, 642 F.2d 350, 354-356 (9th Cir. 1981), enforcing 243 N.L.R.B. 837, 845 (1979); *NLRB* v. *Matouk Industries, Inc.*, 582 F.2d 125, 130 (1st Cir. 1978); *NLRB* v. *Pacific Southwest Airlines*, 550 F.2d 1148, 1152 (9th Cir. 1977), enforcing 201 N.L.R.B. 647, 657 (1973); *NLRB* v. *Hendel Mfg. Co.*, 483 F.2d 350, 353 (2d Cir. 1973). See also *NLRB* v. *Jamaica Towing, Inc.*, 632 F.2d 208, 212-215 (2d Cir. 1980).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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